IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1005 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BHERUMAL MADANLAL SHAH

Appearance:

MR KT DAVE, APP for Petitioner

MR PRADYUMAN B BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 03/03/2000

ORAL JUDGEMENT

1. This is an appeal against impugned order of acquittal dated 20/6/1990 rendered by the learned Chief Judicial Magistrate, Ahmedabad (Rural) in Criminal Case No. 1062 of 1986 in which original accused being the

respondent herein faced charge for the offence punishable u/S. 7(1) read with section 16 (i) (a) of the Prevention of Food Aduletration Act, 1954 (for short 'the Act') on the ground that when the concerned Food Inspector had taken sample of dark brown coloured wrinkled surface Mari from the accused on 31/1/1986 and sent it for analysis it was found that the sample did not conform to the standards. The Ld. Chief Judicial Magistrate rendered acquittal on the ground that the Public Analyst who had the occasion to examine for analysis the sample in question was not authorised to do so. Upon leave having been granted, the appeal preferred by the State of Gujarat against the said judgment and order of acquittal came to be admitted.

2. Today when the matter came up for final hearing, this Court had an occasion to hear Ld. A.P.P. and Ld. Advocate for the accused. The short ground on which the acquittal is sought to be challenged is that the report of the Public Analyst does show non-compliance of the standards laid down as per the aforesaid Act as well as rules framed thereunder. It has been submitted that in Criminal Case No. 117 of 1989 the same Court had an occasion to convict the accused on the basis of the report of the same public analyst. Apart from the fact that this Court does not have the benefit of scrutinising whether the relevant notifications were shown to the Ld. Chief Judicial Magistrate in the other case, in the present case the notifications were brought to the notice of the Ld. Chief Judicial Magistrate. This can be visualised from the discussion of the inciident vis-a-vis the evidence placed on record from pars. 4 and 5 of the impugned judgment and order of acquittal. The Ld. Chief Judicial Magistrate clearly appears to have scrutinised the notification issued by the Government of Gujarat and the relevant dates of the notification while comparing the same with the date on which the sample in question came to be examined by the public analyst Mr. P.M. Patel who had then no authority to do so and give his report. Even on going through the report it would appear that the sample in question has not been found to be unfit for human consumption or hazardous to human health. Only light bergies is more to the extent of 4.79% which would make a difference in the weight of the article in question. In this connection, reference has been made to a decision of this Court in the case of Kishorkumar Venilal Patel v. Dayaswarup Bhailalbhai Rao reported in 32 (1) - 1991 (1) G.L.R. 380 where black pepper was the article for consideration by this Court. Following observations appearing in para. 5 of the citation have been read before this Court :-

"It has been submitted by the learned Counsel for the petitioner-accused that the sample is a "primary food" and added pin heads in primary food is not injurious to the health and, therefore, conviction cannot be recorded against the petitioner-accused. In support of his submission, he has relied on the judgment reported in the case of Rakesh Kumar v. State of U.P. 1984 (3) Crimes 681. It has been observed in para 4 as under :

"So, there is no doubt that light berries (dried Kali Mirch) was 13.1 per cent whereas the permissible limit is 10 per cent. The extraneous matter is permissible upto 3 per cent which was not found in the sample in question. Similarly 4 per cent pin heads are allowed and the same was missing in the present case. In other words, there was no other defect except, that the light berries exceeded 3.1 per cent. As already stated light berries are dried Kali Mirch. Section 2 (xii-a) of the Act defines the "primary food" as an article of food being a produce of agriculture or horticulture in its original forms. So, there is no doubt that the black pepper is a primary food. Section 2 (m) of the Act runs as below :

If the quality or purity of the article falls below the prescribed standard of its constituents are present in quantities not within the prescribed limits of variability but which does not render injurious to health :

Provided that, where the quality or purity of the article being primary food has fallen below the prescribed standards of its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then such article shall not be deemed to be adulterated within the meaning of this sub-clause."

In so far as the present case is concerned, it would not be necessary to go to the aforesaid aspect of the case in as much as report of the Public Analyst which would be the very basis for finding whether breach of the provisions of the Act or rules has been committed or not, will not be available to the prosecution for Public Analyst who has given the report did not have authority to do so. This can be visualised from the following notifications which have been brought to the notice of this Court also. First notification is dated 6/3/1984 and the same reads as under :-

"Prevention of Food Adulteration Act, 1954.
No. GY/81/26/PFA/1083/3100/JII. - In exercise of the powers conferred by Section 8 of the Prevention of Food Adulteration Act, 1954 (Act XXXVII of 1951), the Government of Gujarat hereby appoints Shri P.M. Patel, Senior Scientific Assistant, Food Division of the Regional Food Laboratory, Rajkot to be the Public Analyst for all the local areas of the State of Gujarat except the local areas within the district of Baroda."

The second notification is dated 6/9/1985 and the same reads as under :-

"No. GY/28/DLB/1082/2619(83) JII. - In exercise of the powers conferred by section 8 of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and in supersession of all the previous notifications issued in this behalf in so far as they relate to all the State Public Health Laboratories including all Food and Drugs Laboratories in the State of Gujarat, the Government of Gujarat hereby appoints Shri I.M. Desai, Junior Scientific Officer in Food and Drugs Laboratory, Vadodara to be the public Analyst for all the local areas of the State of Gujarat."

The sample in question was taken on 31/1/1986 and the exercise for its examination was undertaken on or around 6/2/1986. The report is dated 13/2/1986.

Having gone through the aforesaid aspect of the case, the acquittal order can hardly be faulted. The present appeal cannot, therefore, be entertained. Hence

the same is dismissed.

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PVR.